

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE: Phenylpropanolamine (PPA)
Products Liability Litigation

_____	:	No. MDL 1407
	:	
This document relates to all actions.	:	CONFIDENTIALITY ORDER
	:	
	:	
_____	:	

On December 17, 2003, the Court held a conference with representatives of the MDL Plaintiffs' Steering Committee and Defendants Chattem, Inc. ("Chattem"), The Delaco Company, as successor by merger to Thompson Medical Company, Inc. ("Delaco"), and Sidmak Laboratories, Inc. ("Sidmak") (collectively the "Parties"). At that time, the Parties informed the Court that the Plaintiffs' Steering Committee, Chattem and Delaco are entering into a Memorandum of Understanding regarding the potential global settlement of phenylpropanolamine ("PPA")

products liability cases involving Dexatrim and other PPA appetite suppressant products distributed by Chattem and Delaco.

The Memorandum of Understanding contemplates that the Parties will enter into Settlement Agreements – one with respect to Chattem, one with respect to Delaco – under which, in exchange for general releases and discharges of certain claims, qualifying Plaintiffs will receive compensation based on an evaluation of their claims under the Dexatrim Case Scoring System and Matrix (the “Dexatrim Matrix”).

Provisions relating to mechanisms of effectuating the Settlement Agreements, implementation, funding, claims documentation, and administration of the settlement, among other things, have not yet been agreed to among the Parties, and are to be the subject of good faith negotiation as described in the Memorandum of Understanding. Therefore, there is a need to keep the Dexatrim Matrix confidential pending further settlement negotiations and until Settlement Agreements are executed by the Parties, and this Order is vacated.

IT IS HEREBY ORDERED:

1. The contents of the Dexatrim Matrix will be filed under seal and shall not be disclosed except as follows:
 - a. In a pending lawsuit against any Defendant Party to the Memorandum of Understanding alleging injury due to the ingestion of Dexatrim or another PPA appetite suppressant distributed or manufactured by any Defendant Party to the Memorandum of Understanding, Plaintiff, by counsel of record, may obtain a copy of the Dexatrim Matrix from Plaintiffs’ Steering Committee provided that Plaintiff, by counsel of record, signs the Endorsement of Confidentiality Agreement attached at Exhibit A. The Dexatrim

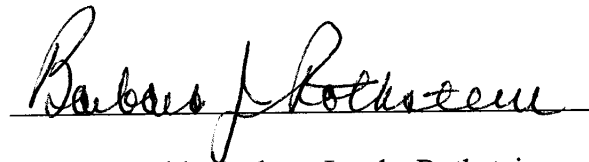
Matrix may only be used in connection with the settlement of actions involving Parties to the Memorandum of Understanding.

- b. Defendant Parties to the Memorandum of Understanding may disclose the Dexatrim Matrix to their insurers, attorneys, and any other person or entity necessary to obtain funding for the settlement, provided those insurers, attorneys or other persons or entities sign the Endorsement of Confidentiality Agreement attached at Exhibit B.
2. Counsel for Sidmak Laboratories, counsel for Alps Pharmaceuticals Inc., and certain plaintiffs' counsel have received copies of the Dexatrim Matrix pursuant to a confidentiality agreement dated March 2003, that was previously negotiated by the Parties. This Order supersedes any previous confidentiality agreement regarding the Dexatrim Matrix that was entered into by the Parties. Any person or entity who has signed any such confidentiality agreement or who has previously obtained a copy of the Dexatrim Matrix is bound by this Order.
3. If the Dexatrim Matrix is subpoenaed by any court, administrative or legislative body, or any other person or organization purporting to have authority to subpoena such data or information, the party to whom the subpoena is directed, shall not, to the extent permitted by applicable law, provide or otherwise disclose the Dexatrim Matrix without waiting ten (10) business days after first notifying this Court, the Plaintiffs' Steering Committee, counsel for all Defendant Parties to the Memorandum of Understanding in writing of:
 - a. the date on which compliance with the subpoena is requested;
 - b. the location at which compliance with the subpoena is requested;

- c. the identity of the party serving the subpoena; and
 - d. the case name, jurisdiction, and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding, or other proceeding in which the subpoena has been issued;
4. All Parties and counsel of record in this litigation shall comply with the provisions of this Confidentiality Order. In the event of a change of counsel, retiring counsel shall fully instruct new counsel of their responsibilities under this Order.
5. The terms of this Confidentiality Order shall be in effect until modified or vacated by the Court.

IT IS SO ORDERED.

Dated: December 19, 2003

A handwritten signature in cursive script, reading "Barbara Jacobs Rothstein", written over a horizontal line.

The Honorable Barbara Jacobs Rothstein

EXHIBIT A

ENDORSEMENT OF CONFIDENTIALITY ORDER

I hereby attest to my understanding that the Dexatrim Scoring System and Matrix (the "Dexatrim Matrix") provided to me is subject to the Confidentiality Order entered December 18, 2003 (the "Confidentiality Order") in In re: Phenylpropanolamine (PPA) Products Liability Litigation, MDL 1407 (W.D. Wa.); that I have been given a copy of and have read the Confidentiality Order, and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Confidentiality Order is a prerequisite to my review of the Dexatrim Matrix.

I further attest that I am counsel of record for Plaintiff _____ in a pending lawsuit against a Defendant Party to the Memorandum of Understanding that alleges injury due to the ingestion of Dexatrim or another PPA appetite suppressant distributed or manufactured by a Defendant Party to the Memorandum of Understanding. The lawsuit is pending in _____, the docket number for the lawsuit is _____, and the lawsuit was commenced on _____.

I agree that I shall not disclose to others, including co-counsel or referring counsel, the Dexatrim Matrix, in any form whatsoever, and that the Dexatrim Matrix may only be used in connection with the settlement of actions involving parties to the Memorandum of Understanding.

I further agree and attest to my understanding that my obligation to honor the confidentiality of the Dexatrim Matrix will continue until the Court modifies or vacates the Confidentiality Order.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Confidentiality Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court, Western District of

Washington, for the purposes of any proceedings relating to enforcement of the Confidentiality Order.

I further agree to be bound by and to comply with the terms of the Confidentiality Order as soon as I sign this Endorsement of Confidentiality Order, whether or not the Confidentiality Order has yet been entered as an Order of the Court.

Dated: _____

By: _____

Subscribed and sworn to before me this

____ day of _____, 200_.

Notary Public

EXHIBIT B

ENDORSEMENT OF CONFIDENTIALITY ORDER

I hereby attest to my understanding that the Dexatrim Scoring System and Matrix (the "Dexatrim Matrix") provided to me is subject to the Confidentiality Order entered December 18, 2003 (the "Confidentiality Order") in In re: Phenylpropanolamine (PPA) Products Liability Litigation, MDL 1407 (W.D. Wa.); that I have been given a copy of and have read the Confidentiality Order, and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Confidentiality Order is a prerequisite to my review of the Dexatrim Matrix.

I further attest that I am an insurer, attorney, or _____ for _____, who is a Defendant Party to the Memorandum of Understanding.

I agree that I shall not disclose to others, except in accord with the Confidentiality Order, the Dexatrim Matrix, in any form whatsoever, and that the Dexatrim Matrix and the information contained therein may be used only for the purposed authorized by the Confidentiality Order.

I further agree and attest to my understanding that my obligation to honor the confidentiality of the Dexatrim Matrix will continue until the Court modifies or vacates the Confidentiality Order.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Confidentiality Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court, Western District of Washington, for the purposes of any proceedings relating to enforcement of the Confidentiality Order.

I further agree to be bound by and to comply with the terms of the Confidentiality Order as soon as I sign this Endorsement of Confidentiality Order, whether or not the Confidentiality Order has yet been entered as an Order of the Court.

Dated: _____

By: _____

Subscribed and sworn to before me this

___ day of _____, 200_.

Notary Public